EXHIBIT Y

Federal Communications Commission, Fourth Annual Report, *In re Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, FCC CS Docket No. 97-141, 13 FCC Rcd. 1034 (rel. January 13, 1998), available on Westlaw (1998 WL 10229) and Lexis (1998 FCC LEXIS 140).

LEXSEE 13 fcc rcd 1034

In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming

CS Docket No. 97-141

FEDERAL COMMUNICATIONS COMMISSION

13 FCC Rcd 1034; 1998 FCC LEXIS 140; 11 Comm. Reg. (P & F) 147

RELEASE-NUMBER: FCC 97-423

January 13, 1998 Released; Adopted December 31, 1997

ACTION: [**1] FOURTH ANNUAL REPORT

JUDGES:

By the Commission: Chairman Kennard and Commissioners Ness, Furtchgott-Roth and Tristani issuing separate statements

OPINIONBY:
SALAS

OPINION:

[*1036] I. INTRODUCTION

1. This is the Commission's fourth annual report ("1997 Report") n1 to Congress submitted pursuant to Section 628(g) of the Communications Act of 1934, as amended ("Communications Act"). Section 628(g) requires the Commission to report annually to Congress on the status of competition in markets for the delivery of video programming. n2 Congress imposed this annual reporting requirement in the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") n3 as a means of obtaining information on the competitive status of markets for the delivery of video programming. n4

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n1 The Commission's first three reports appear at: Implementation of Section 19 of the 1992 Cable Act (Annual Assessment of the Status of Competition in the *Market for the Delivery of Video Programming), CS Dkt. No. 94-48, First Report ("1994 Report"), 9 FCC Rcd 7442 (1994)*: Annual Assessment of the Status of Competition in the *Market for the Delivery of Video Programming, CS Dkt. No. 95-61, Second Annual Report ("1995 Report"), 11 FCC Rcd 2060 (1996)*; and Annual Assessment of the Status of Competition in the *Market for the Delivery of Video Programming, CS Dkt. No. 96-133, Third Annual Report ("1996 Report"), 12 FCC Rcd 4358 (1997)*. [**2]

n2 Communications Act of 1934, as amended, § 628(g), *47 U.S.C. § 548*(g) (1996) ("Communications Act").

strive to make a competitive marketplace a reality for all consumers.

11. The following paragraphs contain a more detailed summary of the findings in this 1997 Report:

OVERVIEW OF VIDEO PROGRAMMING DISTRIBUTION MARKET:

* Geographic and Product Markets; For purposes of analysis, competition in the delivery of video programming involves local markets in which consumers can choose among particular multichannel or other video programming distribution services. The products that are sold in these markets consist of bundles of attributes -- antenna service, basic or optional tiers or packages of video programming channels, premium per-channel charge [**11] services, pay-per-view channels, and others. Providers of these services increasingly will participate in a broader telecommunications market that includes both video and nonvideo products as new communications services are added to their offerings. National, regional, and local markets are also involved in the video programming purchasing activities of these video providers.

* MVPD Market Overview: A total of 73.6 million households subscribed to multichannel video programming services as of June 1997, up 2.8% over the 71.6 million households subscribing to MVPDs in September 1996 reported in the 1996 Report. This subscriber growth accompanied a 2.9 percentage point increase in multichannel video programming's penetration of television households to 75.9 % in June 1997. During this period, the number of cable subscribers continued to grow, reaching 64.2 million as of June 1997, up 1% over the 63.5 million cable subscribers in September 1996. Since the 1996 Report, cable's share of total MVPD subscribers, however, continued to decrease from 89% of all multichannel video subscribers as of September 1996 to 87% of all multichannel video subscribers as of June 1997. Conversely, noncable [**12] subscribers continued to grow, constituting 13% of all multichannel video subscribers as of June 1997, up from 11% last year. The total number of noncable MVPD subscribers grew from 8.1 million as of September 1996 to 9.5 million as of June 1997, an increase of almost 20% since the 1996 Report.

Local markets for the delivery of video programming generally remain highly concentrated and are still characterized by some barriers to both entry and expansion by competing distributors. DBS service is widely available and constitutes the most significant alternative to cable television. The digital technology employed by DBS provides high channel capacity and high picture quality. However, DBS service is different from cable service in a number of respects, including; (1) local broadcast signals are not available by satellite; (2) up front equipment and installation costs; and (3) the need to purchase additional equipment to receive service on additional television sets. Competitive overbuilding by franchised cable systems remains minimal, but is increasing and appears to improve service and/or pricing [*1040] where it exists. MVPDs using other distribution technologies have not posted subscribership [**13] increases comparable to DBS increases, but are in the process of testing digital technology that has the potential to improve significantly the competitiveness of their services.

MARKET PARTICIPANTS

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* Cable Systems: Incumbent franchised cable systems remain the primary

taking place. The Commission has adopted rules for implementation of digital television ("DTV") and broadcasters have continued testing DTV as they plan for the use of DTV spectrum. Under the Commission's rules for DTV, digital encoding and transmission technology will permit stations to broadcast: one or perhaps two High Definition Television ("HDTV") signals; multiple streams of Standard Definition Television ("SDTV") signals; or a combination of the two. The first DTV stations will begin broadcasting in the top ten markets by November 1998, with the digital transition currently scheduled to be completed [**23] by 2006.

[*1043] LOCAL, REGIONAL, AND NATIONAL HORIZONTAL MARKET DEVELOPMENTS

Multiple Dwelling Unit Buildings as a Separate Market: Video distribution competition within and for multiple dwelling unit buildings ("MDUs") appears to be developing as a distinct market separate from neighboring areas. Competitors for this market face different economics, technical applications, and regulatory issues.

Local Market Competition for Video Subscribers: Local markets for the delivery of video programming generally remain highly concentrated and continue to be characterized by some barriers to entry and expansion by potential competitors to incumbent cable systems. Competitive overbuilding by franchised cable operators remains minimal but is increasing (particularly by LECs) and appears, to varying degrees, to improve service and/or pricing where it exists. It remains difficult to determine whether or when competition from closely substitutable multichannel video programming services will affect currently non-competitive markets. DBS service is available in almost all areas and constitutes the most significant alternative to cable television. Its major advantage is its ability to offer service which [**24] is significantly different from cable service with respect to signal quality and programming options. Its major disadvantages, however, include its inability to provide local broadcast programming and the expense of its equipment and installation. In addition, its current advantage in channel capacity may be transitory once cable systems deploy digital distribution technology. MVPDs using other distribution technologies have not posted subscribership increases comparable to DBS subscribership increases, but are in the process of testing digital technology that has the potential to improve significantly the competitiveness of their services. Consequently, it remains difficult to predict the extent to which competition from MVPDs using non-cable delivery technologies will constrain cable systems' ability to exercise market power in the future.

Local Interservice Competition: Telephone Companies Offering Video and Cable Operators Offering Telephony: The 1996 Act repealed a statutory prohibition against an entity holding attributable interests in a cable system and a LEC with overlapping service areas. At the time of the 1996 Act's passage, members of the local telephone industry indicated [**25] that they would begin to compete in video delivery markets, and cable television operators indicated that they would begin providing local telephone exchange service. The expectation was that there would be a technological convergence that would permit use of the same facilities for provision of the two types of service. This technological convergence has yet to take place. Almost all of the video service being provided by LECs is being provided using conventional cable television technology or wireless cable operations that stand alone from the provider's telephone facilities. The provision of telephone service by cable firms over integrated facilities remains primarily at an experimental stage. The one area

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Exhibit Z

EXHIBIT Z

Federal Communications Commission, Third Annual Report, *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* FCC CS Docket No. 96-496, 12 FCC Rcd. 4358 (rel. January 2, 1997), available on Westlaw (1997 WL 2451) and Lexis (1997 FCC LEXIS 151).

LEXSEE 12 fcc rcd 4358

In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

[PART 1 OF 3]

CS Docket No. 96-133

FEDERAL COMMUNICATIONS COMMISSION

12 FCC Rcd 4358; 1997 FCC LEXIS 151; 5 Comm. Reg. (P & F) 1164

RELEASE-NUMBER: FCC 96-496

January 2, 1997 Released; Adopted December 26, 1996

ACTION: [**1] THIRD ANNUAL REPORT

JUDGES:

By the Commission

OPINION:

[PART 1 OF 3]

[*4360] I. INTRODUCTION

1. Section 628(g) of the Communications Act of 1934, as amended. ("Communications Act") requires the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming. n1 Congress imposed this annual reporting requirement in the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), n2 as one means of obtaining information on the competitive status of markets for the delivery of multichannel video programming delivery that would aid both Congress and the Commission in determining when there was competition sufficient to reduce or eliminate many of the regulatory restraints imposed on the cable industry by that legislation. n3 This is the Commission's third annual report ("1996 Report") to Congress submitted in compliance with this statutory requirement. n4 In this 1996 Report, we update our two prior reports and provide data and information that summarizes the status of competition in the market for the delivery of video programming. In the two prior reports we described the methodology and theory underlying our competitive analysis. We do not [**2] repeat that information in this report other than in an abbreviated fashion, and provide reference to the relevant discussion in prior reports. The information and analysis provided in this third report are based on publicly available data, filings in various Commission rulemaking proceedings, and information submitted by commenters in response to a Notice of Inquiry ("Notice") in this docket. n5

n1 Communications Act of 1934, as amended. § 628(g), 47 *U.S.C.* § *548*(g) (1996) ("Communications Act").

n2 Pub. L. No. 102-385, 106 Stat. 1460 (1992) n7 Appendix H of the 1994 Report describes methods for assessing the status of competition in markets for the delivery of multichannel video programming. 1994 Report, 9 FCC Rcd at 7623, App. H. [**5]

B. Summary of Findings

4. In this 1996 Report, the Commission makes the following findings:

. The 1996 Act embodies Congress' intent to promote a "pro-competitive national policy framework" and eventual deregulation of markets for the delivery of video programming. Several of the 1996 Act's provisions are intended to build on prior efforts, particularly the 1992 Cable Act, by removing additional barriers to competitive entry in these markets and establishing market conditions that promote the process of competitive rivalry. Many provisions of the 1996 Act, and the Commission's actions to implement them, have the potential for fostering increased competition. The Commission has adopted rules to implement the open video system provisions of the 1996 Act and has adopted rules to implement the 1996 Act provision which preempts certain local government and non-government restrictions on reception devices, including antennas and dishes for reception of over-the-air broadcast, wireless cable and DBS signals. The Commission has adopted similar rules with respect to certain home satellite dish services. A change in the definition of a cable system made by the 1996 Act now permits SMATV [**6] operators [*4362] to serve buildings regardless of ownership without being subject to regulation as cable operators, provided that public rights-of-way are not used in the process.

. We find that incumbent franchised cable systems continue to be the primary distributors of multichannel video programming, although other MVPDs, particularly those using alternative technologies (e.g., DBS, wireless cable and SMATV systems), continue to increase their share of subscribers in many markets. Subscribership for distributors using technological alternatives to traditional cable service now accounts for 11% of total MVPD subscribership. Non-cable MVPD subscribership has been increasing an average of 22% per year since 1990, with cable subscribership currently down to 89% of all MVPD subscribers. Notwithstanding this decrease in cable systems' share of total MVPD subscribers, the actual number of cable subscribers continues to increase. In fact, since the 1995 Report, the number of cable subscribers increased by two million compared to the increase in combined subscribership for all other MVPDs of 2.3 million.

. Local markets for the delivery of video programming generally remain highly concentrated, [**7] and structural conditions remain in place that could permit the exercise of market power by incumbent cable systems. Overall, our conclusion concerning competition in markets for the delivery of multichannel video programming remains unchanged from last year -- it remains difficult to determine to what extent these markets will be characterized over the long term by vigorous rivalry among multiple MVPDs offering closely substitutable services or, conversely, the extent to which many of these markets will remain dominated by one or two providers facing less vigorous rivalry from MVPDs offering highly-differentiated or niche programming services.

. We find a growing but still very limited number of instances where incumbent cable system operators face competition from MVPDs offering services with very similar attributes (i.e., overbuilds/wired delivery). Where such competition exists, such as in Dover Township, New Jersey, the effects of competition are readily apparent. We also find a substantially increased presence of MVPDs deploying somewhat differentiated services, particularly DBS service providers. FCC000000530

Increased competition among DBS service providers has led to lower equipment [**8] prices and, possibly, increases in the number of cable subscribers choosing to drop or reduce cable services in favor of DBS services. Moreover, some cable system operators appear to be taking steps to improve their service offerings in response to the availability of DBS service. MVPDs using other distribution technologies, such as MMDS, have not posted comparable increases in subscribership, but are in the process of testing digital technology that has the potential to significantly improve the competitiveness of their services. Consequently, it remains difficult to predict the extent to which competition from MVPDs using non-cable delivery technologies will constrain cable systems' ability to exercise market power in the future.

. As a result of acquisitions and trades, cable multiple system operators ("MSOs") have continued to increase the extent to which their systems form regional clusters. The number of clusters of systems serving at least 100,000 subscribers increased from 97 to 137, and these clustered systems now account for service to approximately 50% of the nation's cable subscribers.

. [*4363] Nationally, concentration among the top cable MSOs has continued to increase, [**9] but still remains within the moderately concentrated range at 1326 (an Herfindahl-Hirschman Index ("HHI") between 1000 and 1800). If all MVPDs are included in the calculation, national concentration falls just above the threshold of the moderately concentrated range with an HHI of 1013. DBS providers DIRECTV and PRIMESTAR rank among the ten largest MVPDs in terms of nationwide subscribership with over 2.0 and 1.5 million subscribers, respectively.

. Vertical integration of national programming services between cable operators and programmers declined from last year's total of 51% to just 44% this year. We find, however, insufficient evidence to make any determination of the effect to date of these developments. The decline is due largely to the sale of Viacom's cable system assets. In addition, of the 16 programming services that were launched since the 1995 Report, 10 are not vertically integrated. Access to programming remains one of the most critical factors for the successful development of competitive MVPDs. Competing MVPDs have complained about the potential unavailability of programming distributed by means other than satellite or produced by programmers that are not vertically [**10] integrated with [ILLEGIBLE WORDS] To the extent that it appears that the denial of access to programming serves to deter entry of competitors in markets for the delivery of video programming, we will be concerned about these developments.

. Technological advances are occurring that will permit MVPDs to increase both quantity of service (i.e., an increased number of channels using the same amount of bandwidth or spectrum space) and types of offerings (e.g., interactive services). MVPDs continue to pursue new system architectures, upgraded facilities, use of increased bandwidth and deployment of digital technology.

. Our findings as to particular distribution mechanisms operating in markets for the delivery of video programming include the following:

. Cable Systems: The cable industry has continued to grow in terms of subscriber penetration, average system channel capacity, the number of programming services available, revenues, audience ratings and expenditures on programming since the 1995 Report. FCC000000531

. DBS Service Providers: Subscribership to DBS services increased from 1.7

million homes last year to nearly 4 million homes at the end of October 1996. This increase is attributable [**11] in part to the development of competition from two new DBS services in the last year -- AlphaStar and EchoStar -- and price competition among providers that has significantly lowered the cost of receiving equipment.

. Wireless Cable Systems: Although wireless cable systems showed some growth in subscribership, the most significant development in 1996 was MMDS systems' preparation for the deployment of digital systems in 1997. This will increase the number of channels that MMDS systems can offer and permit them to be more competitive with incumbent cable systems. Throughout most of the year, LECs continued to expand their investment in the wireless industry, [*4364] but some have recently cut back on that investment. We also observe a continuation of the trend toward increased consolidation among wireless companies.

. SMATV Systems: SMATV subscribership increased 10.5% over the past year in systems that serve MDUs. Industry analysts attribute the growth, among other things, to technical improvements that increased operating efficiencies and to expanded product offerings, i.e., security features and diverse programming.

. Broadcast TV: Broadcast service continues to serve as both a transmission [**12] medium for many households, and a primary source of programming for most viewers regardless of distribution media. Regulatory changes and technological advances may, at some point in the future, permit the use of broadcast television and other existing and potential video technologies, such as low power television, for distribution of multichannel video programming.

. LEC Entry: The 1996 Act expands opportunities for LECs to enter markets for the delivery of multichannel video programming. Since adopting rules implementing the 1996 Act's open video system ("OVS") provision, we have certified the conversion of Bell Atlantic's Dover, New Jersey, video dialtone system to an OVS and authorized two additional OVS operators. In the last year, some LECs have continued to expand franchised cable operations, both within and outside their telephone service areas.

. Utilities: Section 103 of the 1996 Act removes regulatory barriers to entry in telecommunications and video markets for "registered" public utility holding companies. On September 12, 1996, the Commission adopted final rules to implement Section 103, and, to date, has granted all 18 applications filed thus far under the 1996 Act. [**13]

II. THE TELECOMMUNICATIONS ACT OF 1996

5. The Telecommunications Act of 1996, enacted February 8, 1996, marks a fundamental shift toward competition throughout the entire telecommunications marketplace. Congress specifically stated its intent to establish a "pro-competitive de-regulatory national policy framework" for the telecommunications industry. n8 Consistent with this philosophy, the 1996 Act contains several provisions that focus on removing barriers to competitive entry and on establishing market conditions that promote competitive firm rivalry. In addition to encouraging competition in the local telephone exchange market, the 1996 Act also encourages competition in the market for the delivery of multichannel video programming.

n8 H. R. Rep. No. 104-458, 104th Cong. 2d Sess. 1 (1996) ("Conference Report").

EXHIBIT AA

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EXHIBIT AA

Federal Communications Commission, Second Annual Report, *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* FCC CS Docket No. 95-61, 11 FCC Rcd. 2060 (rel. December 11, 1995), available on Westlaw (1995 WL 733714) and Lexis (1995 FCC LEXIS 7901).

LEXSEE 11 fcc rcd 2060

In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

CS Docket No. 95-61

FEDERAL COMMUNICATIONS COMMISSION

11 FCC Rcd 2060; 1995 FCC LEXIS 7901; 1 Comm. Reg. (P & F) 530

RELEASE-NUMBER: FCC 95-491

December 11, 1995 Released; Adopted December 7, 1995

ACTION: [**1] SECOND ANNUAL REPORT

JUDGES:

By the Commission: Commissioner Barrett issuing a separate statement.

OPINION:

[*2062] **I. INTRODUCTION**

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming. n1 This is the Commission's second report issued in compliance with this statutory requirement. n2 This second report ("1995 Report") is based on publicly available data, filings in various Commission rulemaking proceedings, and information submitted by commenters in response to a Notice of Inquiry ("NOI") in this docket. n3

n1 Communications Act of 1934 ("Communications Act") § 628(g), *47 U.S.C. § 548*(g).

n2 The Commission released its first report pursuant to this statutory requirement on September 28, 1994. Implementation of Section 19 of the 1992 Cable Act (Annual Assessment of the Status of Competition in the *Market for the Delivery of Video Programming), First Report, CS Docket No. 94-48, 9 FCC Rcd 7442 (1994)*.

n3 Annual Assessment of the Status of Competition in the *Market for the Delivery of Video Programming, Notice of Inquiry, CS Docket No. 95-61, 10 FCC Rcd 7805 (1995)*. A list of these submitted comments and reply comments is set forth in Appendix A. [**2]

A. Scope of this Report

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2. The purpose of this 1995 Report is to provide data and information that summarizes the status of competition in the market for the delivery of video programming and that updates our Annual Assessment of the Status of Competition

in the Market for the Delivery of Video Programming, First Report ("1994 Report"). n4 We begin this 1995 Report with an examination of the cable television industry, other existing multichannel video programming distribution technologies, and potential competitors to cable television (Section II). Among the alternative distribution technologies and providers discussed in this section are direct-to-home ("DTH") satellite services, including direct broadcast satellite ("DBS") services and home satellite dishes ("HSDs"), wireless cable systems using frequencies in the multichannel multipoint distribution service ("MMDS") or local multipoint distribution service ("LMDS"), local exchange telephone carriers ("LECs"), satellite master antenna television ("SMATV") systems, and broadcast television service. We also consider several other existing and potential distributors of video programming, such as electric utilities, and other [**3] distribution technologies, including video cassette recorders ("VCRs"), interactive video and data services ("IVDS"), and the Internet.

n4 1994 Report, 9 *FCC Rcd* at *7558 P 253.*

3. Section III of this 1995 Report examines market structure and competition. We evaluate horizontal concentration in the cable television industry in Section III.A. In Section III.B, we evaluate vertical integration between cable television systems and programming services, and report on issues of access to programming. Finally, we address [*2063] technical advances in Section III.C.

4. Our assessment of the status of competition in the market for the delivery of video programming is presented in Section IV. In this section, we examine the extent of competition and evaluate market performance. We also report on existing and potential impediments to entry and competition, including strategic behavior that could deter entry and regulatory, legal, and other potential impediments.

B. Summary of Findings

5. We conclude that cable television systems remain the primary distributors of multichannel video programming services and continue to enjoy market power in local markets, although some progress has begun [**4] toward a competitive marketplace for the distribution of video programming. In the last year, DBS systems have attracted many subscribers to newly available services. MMDS and SMATV systems have also continued to increase in subscribership. Several LECs, however, have modified their plans for wire based video service, including video dialtone ("VDT") service, from the scale of entry reported last year. Some LECs are continuing their deployment of wire based facilities in selected markets, either through VDT or traditional cable systems. In other cases, LECs appear to be focusing their efforts on wireless entry through investment in MMDS facilities. In sum, while subscribership for distributors using alternative technologies has generally increased over the last year, overall subscribership for all distributors using alternative technologies is just 9% of total multichannel video programming distributor ("MVPD") subscribership, whereas cable systems account for 91% of the total. n5 Over the long term, it is difficult to predict the extent to which local markets will be characterized by vigorous rivalry among multiple distributors, or the extent to which distributors using alternative [**5] technologies may remain essentially "fringe" competitors, with relatively small market shares or offering services largely differentiated from other services, at least from those multichannel FCC000000536

packages offered by cable systems. In addition, technological advances, particularly the conversion from analog to digital transmission, may affect the nature and cost of the services provided by cable operators and other MVPDs, and consequently, the extent of rivalry in markets for the delivery of video programming.

n5 Infra Appendix G, Table 1.

6. In this 1995 Report, the Commission makes the following findings:

7. Cable Industry Growth. Since the 1994 Report, subscriber penetration, average system channel capacity, the number of programming services available, revenues, expenditures on programming, and capital investment generally have increased for the cable industry. The number of homes passed by cable grew from approximately 90.6 million at the end of 1993 to approximately 91.6 million at the end of 1994, which is 96% of all television households in the United States. n6 The number of subscribers increased from 57.2 million to [*2064] 59.7 million between the end of 1993 and the end of 1994. [**6] Penetration (i.e., the number of subscribers as a percent of homes passed) rose 3.3% from the end of 1993 to a penetration of 65.2% at the end of 1994. n7 Channel capacity grew slightly, with 97% of all subscribers now receiving service from systems that can provide at least 30 channels. Cable systems with the capacity to offer more than 53 channels accounted for the biggest growth during 1994, with a 9.9% increase in the number of systems, and a 10.1% increase in the number of subscribers. n8 Total cable revenues, as well as revenues from regulated services, remained stable over the year. The industry's cash flow, a measure of earnings before interest, taxes, depreciation, and amortization, was $ 9.94 billion in 1994, a 1.6% decline from the 1993 industry cash flow of $ 10.1 billion. n9 Capital expenditures continue to increase, rising 28% to $ 3.8 billion in 1994. n10

n6 Infra Appendix B, Table 1.

n7 Id.

n8 Id., Tables 3-4.

n9 Id., Table 6.

n10 Paul Kagan Assocs., Inc., The Cable TV Financial Databook 92 (1995) ("1995 Cable Financial Databook").

8. Horizontal Concentration. Since 1994, there has been an increase in the horizontal concentration of cable [**7] multiple system operators ("MSOs") nationwide. A number of cable MSO acquisitions and system trades have resulted in increased regional concentration, or "clustering," of cable system ownership. Based on recent reports of additional proposed transactions, it appears that this trend will continue as cable operators consolidate their holdings regionally. Although the cable industry tends to be moderately concentrated nationally, local markets for the distribution of multichannel video programming tend to be highly concentrated as measured by subscribership among all MVPDs. n11

n11 Infra sec. III.A.

FCC000000538

EXHIBIT BB

EXHIBIT BB

United States Department of Justice, <u>Complaint</u>, *United States v. Primestar, Inc.* (May 12, 1998), available on the U.S. Department of Justice web site <http://www.usdoj.gov/atr/cases/f1700/1757.htm>.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
Department of Justice	)	
Antitrust Division	)	
1401 H Street, N.W., Suite 8000	)	
Washington, DC 20530,	)	
	)	
Plaintiff,	)	Civil No.:
	)	
v.	)	
	)	Filed:
PRIMESTAR, INC.,	)	
8085 S. Chester, Suite 300	)	
Englewood, CO 80112,	)	
	)	
TELE-COMMUNICATIONS INC.,	)	
5619 DTC Parkway	)	
Englewood, CO 80111-3017,	)	

TCI SATELLITE)
ENTERTAINMENT, INC.,)
8085 S. Chester, Suite 300)
Englewood, CO 80111,)
)
TIME WARNER ENTERTAINMENT)
COMPANY, L.P.,)
75 Rockefeller Plaza)
New York, NY 10019,)
)
MEDIAONE GROUP,)
188 Inverness Drive)
Englewood, CO 80122,)
)
COMCAST CORPORATION,)
1500 Market Street)
Philadelphia, PA 19102,)
)
COX COMMUNICATIONS, INC.,)
1400 Lake Hearn Drive, NE)
Atlanta, GA 30319-1464,)

GE AMERICAN)
COMMUNICATIONS, INC.,)
Four Research Way)
Princeton, NJ 08540-6684,)
)
NEWHOUSE BROADCASTING)
CORPORATION,)
5015 Campuswood Drive)
East Syracuse, NY 13057,)
)
THE NEWS CORPORATION)
LIMITED,)
1211 Avenue of the Americas)
New York, NY 10036,)
)
MCI COMMUNICATIONS)
CORPORATION,)
1801 Pennsylvania Avenue, NW)
Washington, D.C. 20006,)
)
and)
)

KEITH RUPERT MURDOCH,)
1211 Avenue of the Americas)
New York, NY 10036,)
)
Defendants.)

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the acquisition by the largest cable companies in the United States of control of the only remaining high-power orbital satellite slot capable of distributing a nationwide package of video programming competitive with that offered by cable. Completion of this acquisition would effectively foreclose the use of this scarce and valuable asset to challenge defendants' monopoly power. In the hands of a competitor whose sole

Page 3

economic interest would be to use this asset profitably, the satellite slot could be a vehicle for a product offering that is higher in quality and lower in cost than currently available offerings. The defendants recognize the magnitude of this competitive threat and seek to "nip it in the bud," to protect their dominance and monopoly profits for years to come.

I. NATURE OF THE ACTION

1. The United States seeks to prevent the proposed acquisition of satellite assets of defendants MCI Communications Corp. ("MCI"), The News Corporation Limited ("News Corp."), and K. Rupert Murdoch ("Murdoch") (collectively "News Corp./MCI") by defendant cable system operators acting through the vehicle of Primestar, Inc. ("Primestar") pursuant to an Asset Acquisition Agreement entered into by defendants on June 11, 1997. By placing News Corp./MCI's satellite assets in the hands of Primestar, which is controlled by five of the largest cable companies in the United States, the proposed acquisition would "substantially lessen competition" and "tend to create a monopoly" in markets for the delivery of multichannel video programming services.

2. Television viewers in the United States today are accustomed to choosing among myriad program offerings. Approximately 76%, or over 73 million, of all the television households in the United States currently pay for some form of multichannel video programming distribution ("MVPD") service. By far the dominant providers of MVPD services are the local cable companies, which collectively account for 87% of all MVPD services sold in the United States. In many local MVPD markets, the franchised cable operator's share of MVPD services exceeds 90%.

FCC000000542

Page 4

3. Cable firms are in large part unregulated monopolists. Responding to Congress's instructions, the Federal Communications Commission ("FCC") reports annually on the status

discussions were between Chase Carey, News Corp.'s Chief Operating Officer, and Leo Hindery, TCI's President, who was negotiating on Primestar's behalf. Hindery's role, according to Malone, was one of "a peacemaker . . .. He kept trying to convince everybody that there was more profit in peace than war." Of all the Primestar partners, Time Warner was the most vehemently opposed to any deal with News Corp. Malone personally was involved in several meetings with Time Warner and the other Primestar cable partners where he was "a proponent of, at least, exploring whether or not we could make peace [with Murdoch]."

60. At the time he was negotiating the proposed transaction with News Corp./MCI on behalf of Primestar, Hindery was not an officer or director of TSAT, but the President of TCI. Nonetheless, Hindery testified that "I felt because this company TSAT had once been part of my company -- I felt I saw a fiduciary responsibility, but one I took very seriously, to the shareholders of TSAT, many of whom were common shareholders of TCI." Hindery believed that the proposed transaction worked to the mutual benefit of TCI and TSAT and that, by reaching the agreement with News Corp./MCI, he could "serve all masters well to the benefit of all." Hindery was recently elected Chairman of the Board of Directors of the NCTA.

61. On June 11, 1997, Primestar announced that it had reached a binding agreement to purchase ASkyB's high-power DBS slot at 110 and other satellite assets. In exchange, News Corp./MCI would receive a 20% non-voting equity share in Primestar and a convertible note, which if exercised would increase News Corp./MCI's equity ownership to 31.4%. Malone testified that this agreement in effect resolved the differences between Murdoch and the cable industry because "it just really says, Hey guys, I'm not Darth Vader anymore. If you carry my programming, you won't be subsidizing the enemy and, therefore, feel free to treat me

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as a friend, not as an enemy." Although the written agreement did not so specify, at about the time the agreement was reached, certain Primestar partners' cable systems began to widely carry Murdoch's program networks.

VI. RELEVANT MARKETS

62. The relevant product market affected by this transaction is the delivery of multiple channels of video programming directly to the home. The programming can be delivered via a number of distinct methods, including cable, satellite or wireless technologies. This product market is referred to by the FCC, as well as the industry generally, as multichannel video programming distribution, or MVPD.

63. The characteristics of an MVPD service are: (1) multiple channels, typically anywhere between 35 and 175; (2) programming that includes a mixture of "basic" services (such as ESPN, CNN, USA, TNT), as well as premium services (such as HBO, Showtime, and Cinemax) that are not available "over-the-air;" and (3) a monthly subscription fee for programming.

64. Over the past decade, cable viewership has grown significantly, while viewership of broadcast TV stations has steadily declined. According to the FCC's 1997 Competition Report, the non-premium cable audience increased its television viewing hours from an average 11.5 share in the 1987-1988 broadcast year to an average 36.25 share in 1996-1997. The audience of the broadcast television stations declined from an average 87.7 share of television viewing hours to an average 66.5 share for the same time period.

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EXHIBIT CC

EXHIBIT CC

Reply Comments of the Staff of the Federal Trade Commission, *In re Satellite Carrier Compulsory License,* Copyright Office Docket No. RM 98-1 (March 1998), available on the FTC web site <http://www.ftc.gov/os/1998/9803/dbscom.htm>.

Before the
Copyright Office, Library of Congress
Washington, D. C.

In re Satellite Carrier Compulsory License; Definition of Unserved Household

Docket No. RM 98-1

REPLY COMMENTS OF THE STAFF OF THE FEDERAL TRADE COMMISSION[1]

March 1998

I. Introduction

The staffs of the San Francisco Regional Office and the Bureau of Economics of the Federal Trade Commission are pleased to respond to the Notice of Inquiry ("NOI") issued by the Copyright Office of the Library of Congress.[2] The NOI solicits comments on whether the satellite carrier compulsory license should be interpreted to permit Direct Broadcast Satellite ("DBS") operators to retransmit local broadcast signals into their home markets, and if so, whether regulations governing the conditions under which franchised cable operators deliver these local broadcast signals should apply to DBS. The satellite carrier compulsory license provides the legal framework through which satellite systems distribute broadcast signals directly to consumers' homes.[3]

The Federal Trade Commission is responsible for maintaining competition and safeguarding the interests of consumers. The staff of the FTC has extensive experience in reviewing competition issues in the area of telecommunications.[4] Our purpose in responding to the NOI is to identify the policy considerations that we believe the Copyright Office should carefully evaluate. The NOI also seeks comments concerning statutory interpretation and legislative history of the Satellite Home Viewer Act.[5] We express no view on the technical issues of statutory construction.

II. Satellite and Cable Compulsory Licenses

Congress has created two compulsory licenses under which multichannel video programming distributors compensate copyright owners, typically program producers and syndicators, not the broadcast stations, whose programs are retransmitted on broadcast channels. The satellite carrier compulsory license permits home satellite dish programming packagers and DBS operators to distribute the programs on superstations nationally and to import the programs on distant network affiliates into areas "unserved" by local network affiliates. A separate "cable" compulsory license applies to wired and microwave multichannel video programming distribution technologies and authorizes retransmission of the programs on superstations in all areas and on network affiliates into "unserved" areas, plus the retransmission of the programs on local channels within the channels' home markets.[6] Together, these two compulsory licenses provide the legal framework under which all currently existing multichannel video programming distribution technologies carry broadcast channels. EchoStar, a DBS operator, now desires to deliver local channels within the channels' home markets under a compulsory FCC000000546 closer substitute for franchised cable service, and likely lead to greater competition among multichannel video programming distributors.[9] While we have no direct evidence that allowing DBS to become a better substitute for cable service will lower cable prices, some indirect evidence suggests such an outcome is likely. Empirical evidence suggests that competition between cable operators results in lower prices with no reduction in quality. For example, a recent study has found that basic cable prices are roughly 20% lower in areas with cable overbuilds than in comparable areas without overbuilds.[10] Service quality, as measured by the number of channels provided in the basic cable package, was comparable between the two groups. Similarly, a recent FCC study examined price differences between "competitive" markets and other markets.[11] This study found that prices were 5% lower in "competitive" markets than non-competitive markets.[12] In addition, the FTC, in its investigations of proposed mergers of cable overbuilds, has found that consumers benefit significantly from this direct competition through lower prices and higher quality.[13]

Moreover, the FCC has noted that DBS currently provides the most robust competitive alternative to cable.[14] For this reason, enhanced DBS/cable competition is likely to have at least some of the impact on price that cable-to-cable competition provides. Consumer surveys show that the absence of the local affiliates of the broadcast networks is a primary reason why consumers continue to subscribe to franchised cable systems instead of switching to DBS.[15] Consequently, allowing DBS operators to retransmit the local network affiliates may make DBS a better substitute for cable and tend to lower cable prices.

IV. The Application of Retransmission Rules to DBS

If the Copyright Office does conclude that the satellite compulsory license extends to the retransmission of local broadcast channels into their home markets, the question remains as to what rules would appropriately govern these retransmissions. In particular, such a policy compels the consideration of whether the "must-carry," "retransmission consent," "network nonduplication," "syndicated exclusivity," and "sports blackout" rules should apply to DBS.[16] In evaluating whether these rules should apply DBS, we address issues relating to economic efficiency and competition. We do not address other policies, such as the vitality of outlets for local expression, which may be important to Congress or the FCC.[17]

The "must-carry" rules, which require retransmission of all local broadcast channels, currently apply to franchised cable operators, but not to other multichannel video programming distributors, such as multichannel multipoint distribution service ("MMDS"or "wireless cable"), local multipoint distribution service ("LMDS" or "cellular cable"), and satellite master antenna television systems ("SMATVs" or "private cable"). The question addressed here is whether the "must-carry" rules should apply to DBS. In general, applying rules equally to all market participants accurately maintains the relative cost and service-quality positions of the participants. Hence, firms experiencing lower costs for a given level of service generate greater sales, thereby minimizing the total cost of producing those services. Nevertheless, two factors in this market suggest that applying "must-carry" to DBS operators would be undesirable.

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EXHIBIT DD